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Fundamental Legal Concepts: The Hohfeldian Framework

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Abstract:

Wesley Newcomb Hohfeld's account of legal rights is now 100 years old. It has been much discussed, and remains very influential with philosophers and lawyers alike. Yet it is still sometimes misunderstood in crucial respects. This article offers a rigorous exposition (with some revisions) of Hohfeld's framework; discusses its claims to comprehensiveness and fundamentality, reviewing recent work on the topic; and highlights the argumentative uses of Hohfeld's most important distinction.

In April 2013, the Supreme Court of Ireland had to rule on an appeal presented by Marie Fleming, a terminally ill woman who, physically unable to end her life on her own, wanted to ensure that there would be no criminal liability for someone who might assist her to commit suicide. Fleming was seeking an order declaring that section 2(2) of the Criminal Law (Suicide) Act 1993—which makes it a criminal offense for a person to 'aid, abet, counsel, or procure' the suicide or attempted suicide of another—was invalid with regard to the Constitution of Ireland. She relied in particular on article 40.3 of the Constitution, which provides that 'The State guarantees in its laws to respect, and . . . to defend and vindicate the personal rights of the citizen,' and that 'The State shall, in particular, by its laws protect as best it may from unjust attack and, in the case of injustice done, vindicate the life, person, good name and property rights of every citizen.'

The Supreme Court decided against her. It took the issue to concern the 'identification of rights and correlative duties,' and construed Fleming's claim as the claim that her

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constitutional ‘right to life’ implied a constitutional ‘right to commit suicide, a right to determine the time and method of death, and to have assistance with the exercise of that right’ (*Fleming v Ireland* [2013] IESC 19, paras. 102, 115). This latter right, however, argued the Court (para. 113), would imply ‘correlative duties on the State and others to defend and vindicate’ it—and such duties would be ‘the antithesis of the [constitutional] right [to life] rather than the logical consequence of it.’ Therefore, the Court concluded (para. 114), ‘there is no constitutional right which the State, including the courts, must protect and vindicate, either to commit suicide, or to arrange for the termination of one’s life at the time of one’s choosing.’

This piece of judicial reasoning is just one particularly tragic illustration of a widespread phenomenon. Courts often use the term ‘right’ equivocally; their grasp of the idea that rights and duties are ‘correlative’ notions is loose; and as a result many verdicts about which rights to recognise or grant are issued on the back of fallacious arguments. These were precisely the sort of mistakes denounced a century ago by Wesley Newcomb Hohfeld, a legal theorist who over the course of two essays—one published in 1913, the other in 1917, both collected in Hohfeld (1923)—set out to disambiguate what he called the ‘chameleon-hued’ notion of a right (1923: 35), and worked out a scheme of eight interrelated concepts forming ‘the lowest common denominators of the law’ (1923: 64). Hohfeld’s account has been much discussed in these past 100 years, and despite some justified criticisms remains very influential. Yet it is still frequently misunderstood in some crucial respects. This article offers a rigorous exposition, with some revisions, of Hohfeld’s framework; discusses its claims to comprehensiveness and fundamentality, reviewing some recent work on the topic; and highlights the argumentative uses of Hohfeld’s most important distinction.

1. Hohfeldian Relations

1.1. Hohfeld's tables

Hohfeld's main goal was to question what he took to be the widespread 'assumption that all legal relations may be reduced to "rights" and "duties," and that these latter categories are therefore adequate for the purpose of analysing even the most complex legal interests' (1923: 35). The word 'right,' he pointed out, is ambiguous; it 'tends to be used indiscriminately' to refer to entitlements of different kinds (1923: 36). What kinds? Hohfeld identified four: rights 'in the strictest sense,' privileges, powers, and immunities. He did not, however, provide analyses of any of these. What he did, as we will see, was show how each of those notions can be paired—or so he claimed—with a different 'correlative' notion, yielding eight (rather than just two) 'strictly fundamental relations' (1923: 36) which can also be arranged into four pairs of 'opposites.' Hohfeld displays the eight notions as follows at the outset of his discussion (1923: 36), before he explains how he came to put these tables together (or even what, exactly, 'jural correlatives' and 'jural opposites' are):

Jural Opposites	{	right	privilege	power	immunity
		no-right	duty	disability	liability
Jural Correlatives	{	right	privilege	power	immunity
		duty	no-right	liability	disability

Tables 1 and 2

These tables are not just initially opaque; they are also somewhat misleading. In the following discussion of Hohfeld's framework I will take him to be concerned with relations between *sentences* ascribing rights, duties, and so on, and only indirectly with relations

between concepts.¹ This is not how Hohfeld speaks, but it will give us a more precise picture of what he does. Hohfeld seems also not to have been fully aware of either the nature of, or the success criteria for, his own inquiry, and I will say something about that as well.

1.2. Jural relations, and claim-rights

Importantly, Hohfeld's first step towards 'limiting the word ["right"] to a definite and appropriate meaning' is to turn to the word 'duty' and to the idea—popular in 'ordinary legal discourse,' he says—that a duty is the 'invariable correlative' of a right (1923: 38). Consider, then, this example of a fully spelled-out sentence ascribing a legal duty:

(1) Amy has a duty towards Benedict to pay him £50.

This sentence describes a three-place relation between (a) Amy, (b) Benedict, and (c) an action(-type) by Amy. Hohfeld would say that the sentence describes a 'jural relation' between Amy and Benedict; 'jural' just means 'legal.'² Amy's duty to pay Benedict £50 is

¹ See Page (1921: 622), Moritz (1960: 58-9), Lindahl (1977: 26-7), Robinson and others (1983: 268-9), (Coyle 2002: 28-9), Gorman (2003: 90-4), and Brown (2005: 348).

² The term 'jural relation' was coined by Terry (1884: 90). It is unclear how Hohfeldian jural relations are to be individuated. It is normally supposed that each Hohfeldian relation involves exactly two persons and one type of action (or omission) by one of them: see Corbin (1919b: 165). But what about legal powers? One can have a power the exercise of which will simultaneously bring about changes in the normative positions of more than two parties: see Simmonds (2001: 152, n. 53). Why should this be treated as a conjunction of as many powers as the number of parties (other than the power-holder) affected by the power-holder's action, rather than (as would seem more intuitively plausible) a single power? One can also have a power the exercise of which will simultaneously bring about changes in many normative positions of another party, while lacking the power to bring about any one of those changes on an individual basis: think, for example, of the many normative

the specific normative position she occupies in this relation. ‘Position’ is a convenient spatial metaphor: a person’s position is where she normatively stands—another spatial metaphor—relative to some other person, and to some type of action or omission by one of them.

Each party to a jural relation is said to occupy a *correlative* position in the relation, and every relation can be described from the perspective of any of the two correlative positions. Consider:

(2) Benedict has, as against Amy, a right that she pay him £50.

Sentences (1) and (2) are semantically equivalent; they describe the same relation ‘from different angles’ (Hohfeld 1923: 73). Note that both sentences concern precisely the same action by the same party—Amy’s action of paying Benedict £50.

This is how Hohfeld begins to explain the commonly held idea that legal rights ‘correlate’ with legal duties. It is also how he begins to disambiguate the term ‘right.’ In one sense of the term, he says, a right just is the correlative of a duty. It is the position occupied by someone, like Benedict, to whom a duty is owed. Hohfeld proposes to call this either a right ‘in the strictest sense’ or a ‘claim’; in more modern literature it is more often called a ‘claim-right.’ So Hohfeld defines a claim-right simply as the correlative of a duty, and a duty

changes effected by one’s acceptance of a complex but all-or-nothing contractual offer. Should we not count that as a single power? Hohfeld is silent on his individuation criteria. Perhaps his point would be that it may indeed be helpful, at least in the context of litigation, to speak of as many power/liability *relations* as there are affected parties or positions, even if we do not quite want to say that there are just as many *powers*. He was not very careful in his use of the phrases ‘jural relations’ and ‘jural conceptions,’ which he sometimes employed interchangeably.

as the correlative of a claim-right (1923: 36).³ Crucially, claim-rights concern actions or omissions by *someone else* (the correlative duty-bearer). There is no such thing as someone's claim-right to do or refrain from doing anything.⁴

1.3. Liberties

We do, of course, commonly speak of our 'rights' to do or refrain from doing this or that. But then by a 'right' to ϕ we must mean something other than a claim-right. One thing we could mean is that we are under *no duty not* to ϕ . This is what Hohfeld called a 'privilege' and most modern authors call a 'liberty'.⁵ It is the second type of normative position he isolates as one to which the term 'right' is often 'indiscriminately' applied (1923: 39).

The content of a liberty is always an action or omission by the liberty-holder. So (3) and (4) are equivalent:

(3) Amy has, as against Benedict, a liberty not to pay him £50.

³ He refrains from providing any further explicit definition. As Gilbert (2012: 307) notes, however, Hohfeld appears to endorse Stayton J's statement in *Mellinger v. City of Houston* (1887) that a right is 'well defined to be a well-founded claim, and a well-founded claim means nothing more nor less than a claim recognized or secured by law': Hohfeld (1923: 38, n. 32a). Interestingly, in a little-known essay that seems to have been published only in Italian, Max Radin, looking to provide expressions that are 'more suggestive' as well as internationally accessible, coins Latin names for all of Hohfeld's positions, and proposes to render 'claim-right' as '*iusta postulatio*' (Radin 1927: 122).

⁴ This is not presented as a conceptual truth about rights. It is simply true *by definition*, given how claim-rights and correlativity have been characterised. ('Claim-right' just is the name given to the position that is the correlative of a duty; any two correlative positions have precisely the same content; and the content of a duty is an action by the duty-bearer.) Finnis calls it an 'axiom' of Hohfeldian analysis (2011: 378); Williams (1956: 1138, n. 11; 1144-5) had stressed the same point, as had Corbin (1919a: 741).

⁵ On this terminological choice, see Williams (1956: 1131-5).

(4) It is not the case that Amy has a duty towards Benedict to pay him £50.

Note that (4)—and therefore also (3)—is the negation of (1): a liberty, Hohfeld says, is the ‘opposite’ of a duty, and the point is that a statement that a person *X* has, towards another person *Y*, a duty to ϕ , and a statement that *X* has, as against *Y*, a liberty *not* to ϕ , are contradictory statements.⁶ Yet his tables—*Tables 1* and *2* above—deceptively suggest that the ‘opposite’ of a duty to ϕ is a liberty to ϕ . This graphical glitch has led and continues to lead to misinterpretations of Hohfeld’s framework. We would do well to follow Glanville Williams’s suggestion and adopt ‘liberty not’ (rather than ‘liberty’ *tout court*) as the name of the relevant position. A liberty to ϕ , then, is a liberty *not*—that is, the absence of a duty—*not* to ϕ : the two negations, as it were, cancel each other out.⁷

1.4. Protected liberties

Liberties do not entail claim-rights. In particular, a liberty to ϕ does not entail duties on others not to interfere with the liberty-holder’s ϕ -ing.⁸ (The reverse is also true: one’s duty

⁶ A liberty, Hohfeld says, is the ‘negation of . . . a duty having a content or tenor precisely *opposite* to that of the [liberty] in question’ (1923: 39). What he means is that the two statements cannot both be true, although one of the two will be true. That is why several authors prefer to substitute ‘contradictories’ for Hohfeld’s ambiguous ‘opposites’: see e.g. Radin (1938: 1148), Williams (1967: 1135), Kramer (1998: 8, n. 1), or van Duffel (2012: 105).

⁷ See Williams 1956: 1135. There is a similar suggestion (made without reference to Williams’ essay) in Fitch (1967: 270-1). See also Clark (1922: 29).

⁸ One popular and simple way of illustrating this point is by considering the relative positions of two boxers in a boxing match: each boxer has a liberty to hit the other according to the rules, but neither has (of course) a claim-right not to be prevented by the other from exercising that liberty. See Lucas (1966: 158), Adams (1985: 94), Carrió (1990: 311-2). One of Hohfeld’s own examples (adapted from Gray 1909: 20) is also

not to ϕ is consistent with a claim-right against interference with one's ϕ -ing.) But in any legal system many of our legal liberties happen in fact to be indirectly 'protected' against interference by a 'perimeter' of legal duties (not to coerce or assault or kill each other, not to steal from each other, etc.). As a result, there may sometimes be little room for others to lawfully prevent us from exercising our liberties.⁹

well-known: if the owners of a shrimp salad say to X , 'Eat the salad, if you can; you have our license to eat it, but we don't agree not to interfere with you,' then, says Hohfeld (1923: 41), 'the privileges [i.e. the liberties] exist, so that if X succeeds in eating the salad, he has violated no right of any of the parties [i.e. the owners],' but 'it is equally clear that if A [one of the owners] had succeeded in holding so fast to the dish that X couldn't eat the contents, no right of X would have been violated.'

⁹ The 'protective perimeter' metaphor is H.L.A. Hart's, who is reported to have used it in lectures at least since 1963-4: see Hart (1982a: 171-3), Carrió (1990: 314, n. 5), and Finnis (2011: 388). Spina (2011) has recently attempted to criticise the thesis that a liberty to ϕ does not imply duties of non-interference, but he misunderstands the notion of a liberty. He argues, for example, that if I erect a fence blocking your view of my garden I am not interfering with your exercise of your liberty to look at me, because the 'real content' of your liberty is 'the bare (act of) looking' where you please rather than 'the fact of succeeding in seeing' what you wish to see (2011: 174); or that if I outrun you and win a race I do not interfere with your exercise of your 'liberty to win' because the content of your liberty 'is only to participate in the race, not to be first' (2011: 173). This is ad hoc and unwarranted. It may well be true that you have a liberty *to look where you please*, and a liberty *to participate in the race*. But if you are under no duty *not to see me*, and under no duty *not to win*, then by definition you *do* (also) have a liberty to see me, and a liberty to win the race; and these are liberties the exercise of which is rendered impossible—and thus 'interfered with'—by my raising of a fence, and by my winning the race.

1.5. Single liberties and paired liberties

Note also that (3) does not entail

(5) Amy has, as against Benedict, a liberty to pay him £50.

Hohfeldian liberties, in other words, are ‘single’ liberties; a liberty to ϕ is compatible either with a liberty not to ϕ or with a duty to ϕ . The ordinary, non-technical notion of being *at liberty* to ϕ , with its implicature of freedom to either ϕ or not ϕ , is analysable as a conjunction—a ‘pair’—of Hohfeldian liberties.¹⁰

1.6. No-rights

Hohfeld takes liberties to be—just like claim-rights—positions in jural relations. How then, he asks, can the relation described in (3) from the perspective of the liberty-holder, be described from the correlative perspective? We could simply deny (2):

(6) It is not the case that Benedict has, as against Amy, a (claim-)right that she pay him £50.

But Hohfeld thinks we should have a positive name to refer to this position, the position of not having a claim-right that someone perform or refrain from performing a certain action.

¹⁰ These terms, ‘single’ and ‘paired,’ were proposed by Wenar (2005: 226). Feinberg (1978: 33) speaks, less helpfully (or less neutrally), of ‘half-liberties’ and ‘full liberties,’ and Hart (1982a: 166-7, 173-4), also unhelpfully (since a Hohfeldian liberty is always one side of a two-party relation), of ‘unilateral’ and ‘bilateral’ liberties.

Noting that there is in ordinary discourse ‘no single term available to express’ it (1923: 39), Hohfeld coins and adopts the hyphenated compound ‘no-right’:

(7) Benedict has, as against Amy, a no-right that she pay him £50.¹¹

1.7. *The tables redrawn*

The interrelation of claim-rights and liberties in a network of correlatives and contradictories is more clearly displayed than in Hohfeld’s original tables (*Tables 1* and *2*) as follows:

	CONTRADICTORIES	
CORRELATIVES	‘ <i>X</i> has, towards <i>Y</i> , a duty to ϕ .’	‘ <i>X</i> has, towards <i>Y</i> , a liberty not to ϕ .’
	‘ <i>Y</i> has, as against <i>X</i> , a claim-right that <i>X</i> ϕ .’	‘ <i>Y</i> has, as against <i>X</i> , a no-right that <i>X</i> ϕ .’

Table 3

These four positions—which are of course only half of Hohfeld’s own set of eight—can also be helpfully depicted as possible outcomes of a judicial dispute from the perspective of each party (see Lucas 1966: 156-7); for example:

¹¹ It might be preferable, grammatically speaking, to say that Benedict has a ‘no-right *with regard to* Amy’s action of paying him £50,’ or something along these lines. But it is not uncommon, in the literature on Hohfeldian positions, to use ‘no-right’ as if it were the same as the non-hyphenated ‘no right’: see e.g. Williams (1956: 1137).

If the court rules:	In favour of X 's doing ϕ	Against X 's doing ϕ
From X 's point of view	' X has, as against Y , a liberty to ϕ .'	' X has, towards Y , a duty not to ϕ .'
From Y 's point of view	' Y has, as against X , a no-right that X not ϕ .'	' Y has, as against X , a claim-right that X not ϕ .'

Table 4

1.8. Powers, liabilities, disabilities, and immunities

Two other kinds of legal entitlements are also sometimes referred to as 'rights,' Hohfeld says, even though they are neither claim-rights nor liberties: powers and immunities. A legal power is a normative ability to change existing legal positions; to have a power is to have 'affirmative "control" over a given legal relation' (Hohfeld 1923: 60). Hohfeld treats powers as themselves legal positions in legal relations, and uses the term 'liability' as the name of the correlative of a power. Thus if A offers to sell his land to B , then once the offer has been received B 'has the power to impose [by "dropping a letter of acceptance in the box"] a[n] . . . obligation *ex contractu* on A and himself,' and the correlative 'liability of A will continue for a reasonable time unless, in the exercise of his power to do so, A previously extinguishes it' (1923: 55). These, then, are equivalent statements:

(8) B has a power as against A to impose on A , by accepting A 's offer, a duty to ϕ .

(9) A has, relative to B , a liability to having a duty to ϕ imposed on him by B 's acceptance of A 's offer.¹²

¹² Hohfeld has nothing to say about the correct formulation of power-attributing (and related) sentences like (8) or (9). I should think that we need to specify (a) the power-holder, (b) the holder (or plural holders: see note 2 above) of the correlative liability (or liabilities), and (c) the content of the power, including both (c1) the

Hohfeld's choice of the word 'liability' is meant to carry no connotation of an unwelcome position. One could be equally liable, for example, to having one's duties extinguished by actions of the corresponding power-holder.

The Hohfeldian 'opposite'—the contradictory—of a power is called a *disability*; the contradictory of a liability, an *immunity*. So all of the following are equivalent:

- (10) It is not the case that *B* has a power as against *A* to impose on *A*, by accepting *A*'s offer, a duty to ϕ .
- (11) *B* has, relative to *A*, a disability to impose on *A*, by accepting *A*'s offer, a duty to ϕ .
- (12) *A* has an immunity as against *B* from having a duty to ϕ imposed on him by *B*'s acceptance of *A*'s offer.
- (13) It is not the case that *A* has, relative to *B*, a liability to having a duty to ϕ imposed on him by *B*'s acceptance of *A*'s offer.

The relations between these four positions can be also displayed in a table like the one given above (*Table 3*) for claim-rights and liberties and their contradictories. For the case of someone's power to impose on someone else a duty to ϕ , for example, we would have:

normative change (or changes) that would be brought about by the exercise of the power, and (c2) the type of action by which the power is to be exercised.

	CONTRADICTIONS	
CORRELATIVES	‘X has, relative to Y, a power to impose on Y, by γ -ing, a duty to ϕ .’	‘X has, relative to Y, a disability to impose on Y, by γ -ing, a duty to ϕ .’
	‘Y has, relative to X, a liability to having a duty to ϕ imposed on him by X’s γ -ing.’	‘Y has, relative to X, an immunity from having a duty to ϕ imposed on him by X’s γ -ing.’

Table 5

1.9. Two families of legal positions

Hohfeld’s eight legal positions, then, constitute two ‘families’ of four positions each: the family of claim-rights, liberties, duties, and no-rights; and the higher-order family of powers, immunities, liabilities, and disabilities.¹³ The four positions within each family are interrelated by correlativity and contradiction. But the two families are independent (or so Hohfeld thinks) in the sense that no statement asserting or denying any position in one of the families implies any statement asserting or denying any position in the other.¹⁴ Thus one’s legal power to bring about certain changes in legal relations does not entail a liberty to bring those changes about, or indeed not to bring them about; one can be under a duty not to exercise one’s power, as well as under a duty to exercise it.

Of the eight Hohfeldian positions, then, four—claim-right, liberty, power, and immunity—are meant to correspond to the four senses in which, according to Hohfeld, the

¹³ The ‘families’ metaphor is from Carrió (1990: 305). The positions in the family of powers are ‘higher-order’ positions in the sense that they concern the change of pre-existing legal positions; but they do not exclusively concern the change of legal positions *in the family of rights*. One can have (and indeed one needs) a power to change another power.

¹⁴ Radin (1938: 1157) puts this point by saying that each set constitutes a separate ‘universe of discourse’; but see the text accompanying note 22 below.

word ‘right’ is used in ordinary legal discourse to refer to kinds of legal entitlements.¹⁵ So what was the nature of Hohfeld’s project? He did not fully explain what ‘claim-right,’ ‘liberty,’ ‘power,’ or ‘immunity’ (or any of their correlative expressions) mean. He disambiguated ‘right,’ but did not provide complete accounts of any of the disambiguated notions. But he expected competent lawyers, despite their terminological carelessness, to understand what each of the notions involved; and he regarded all eight notions as tracking kinds of normative positions that people do already have under existing law. His arrangement of the notions into pairs of correlatives and contradictories seems to have been intended as something of an exercise in rational reconstruction, aiming to identify, bring out, and refine a conceptual structure that he took to underlie ordinary legal discourse. But the main claim was that this refined framework provides a means of describing more accurately the contents of existing law; and the hope was that the framework could then be adopted back by lawyers, replacing traditional linguistic uses, and assisting ‘in the understanding and in the solution if practical, everyday problems of the law’ (Hohfeld 1923: 26).

2. Comprehensiveness and Fundamentality

2.1. Directed duties and the correlativity axiom

Hohfeld claimed that his eight positions were both comprehensive and fundamental, ‘the lowest generic conceptions to which any and all “legal quantities” may be reduced’ (1923: 63-4). To say that they are comprehensive is to say that any claim about a person’s legal entitlements can be analysed and restated in terms of any one or any combination of those

¹⁵ This is not to say that the term ‘right’ is not used in other senses still; but those senses would not track legal entitlements or any kind of normative positions. One example would be the use of ‘right’ to refer to interests: see Kramer (1998: 44-7).

eight positions. To say that they are fundamental is to say that none can be analysed any further into any number of sub-positions.

The upshot is that our ordinary talk of rights and duties can be deceptive not merely because we do not sufficiently discriminate between different kinds of entitlements (often calling a liberty, a power, or an immunity, ‘a *right*’), but also because sometimes what we call ‘a right’ is best understood as a cluster of several different positions (a cluster that may or not include claim-rights). The stock example is the so-called ‘right of ownership’: this phrase can be understood as alluding not to any single legal position but to an ‘aggregate’ (as Hohfeld puts it) of claim-rights, liberties, powers, and immunities.¹⁶

Does the claim to comprehensiveness hold up to scrutiny? The claim turns on what has been called Hohfeld’s correlativity ‘axiom’¹⁷—the assumption that every legal position must correlate, as one side of a legal relation, with a legal position of someone else. But this assumption, as several theorists have pointed out, is problematic. The primary target of criticism has been the thought that every duty necessarily correlates with a claim-right—that duties are necessarily relational positions. There are indeed duties—e.g. the duty that emerges from a promise made to someone—that seem, intuitively, to be relational; the action that is the content of the duty is owed *to* a specific individual, who holds the correlative claim-right.¹⁸ More recently such duties have come to be called ‘directed’ duties (Sreenivasan 2010: 467; May 2015; Sumner 1987: 24 speaks of ‘directional’ duties). But it seems that we also

¹⁶ See Hohfeld (1923: 28, 30, 52, 64-5, 96-7), Stone (1964: 153), or Harris (1997: 86). The usefulness of this sort of analysis, however, is disputed by property law theorists: see e.g. Penner (1997: 23-31).

¹⁷ See Honoré (1960: 456), Kramer (1998: 24).

¹⁸ See Hart (1955: 180-1), Feinberg (1966: 137), Lyons (1970: 46-8), Sumner (1987: 24), and Thomson (1990: 62-4). Most theorists are prepared to grant that every claim-right correlates with a duty on someone else, though this too has been called into question: see e.g. MacCormick (1976) and (1977), and, for discussion, Rainbolt (1993: 109) and Kramer (1998: 24-29).

properly use the term ‘duty’ to refer to what we are required to do regardless of whether we owe it to anyone;¹⁹ and it is plausible to think that the term ‘duty,’ understood in this sense, is also aptly used to pick out legal positions. The standard example of such undirected duties—or ‘absolute’ duties, as Austin (1885: 400-407) called them—is that of the duties imposed by the criminal law (see Hart 1982a: 182-3; Simmonds 2001: xx) and public law (Bamforth 2001); but Perry (2009) has recently argued that there are also ‘standalone’ private-law duties that imply no claim-rights. Unlike directed duties, then, undirected duties do not correlate with claim-rights (or any other sort of entitlement) on anyone else. They are not relational positions. They are therefore not covered by Hohfeld’s scheme; if we can have undirected as well as directed legal duties, Hohfeld’s claim to comprehensiveness is unwarranted.

One might think that this would still leave his framework intact as an account of the domain of legal positions that are indeed relational. In fact, however, the worry runs deeper. Hohfeld’s mistake seems rooted on a confused understanding of the very notion of correlativity. His starting point, as I noted above, is the plausible idea that claim-rights are relational positions, held, as he puts it, *against* other people, who bear correlative duties *toward* the claim-right-holder: ‘If *X* has a [claim-]right against *Y* that he shall stay off the former’s land,’ he writes, ‘the correlative (and equivalent) is that *Y* is under a duty toward *X* to stay off the place’ (Hohfeld 1923: 38). Note, though, that the relational character of such a duty is not a matter of its content. Compare:

(14) *Y* is under a duty towards *X* to stay off *X*’s place.

(15) *Y* is under a duty to stay off *X*’s place.

¹⁹ See Pound (1915: 94), Moritz (1960: 63-4), Stone (1964: 140, 160), Feinberg (1966: 139-141), Lyons (1969: 164), Feinberg (1970: 243-4), and van Duffel (2012: 107).

Although (14) implies (15), the reverse is not the case. *Y* could have an undirected duty to stay off *X*'s place: (15) would then be true, but it would refer to a duty that is not relational in the relevant sense. (*Y* could also have a duty towards *Z*, but no duty towards *X*, to stay off *X*'s place, in which case, again, (14) would be false but (15) true.) In order to discern between directed and undirected duties, then, we would need an account of what it is to owe a duty to someone else. We would need to take a stand on the ongoing debate between philosophers of rights, and adopt some theory—the Will theory, the Interest theory, or some other theory—providing a criterion for the identification of holders of claim-rights.²⁰ That is something that Hohfeld lacks. But Hohfeld does not merely lack such a theory. He is unaware that he needs one, and ends up conflating different senses in which a duty can be said to be relational. I just spoke of directed duties as relational ‘in the relevant sense.’ That is because there are senses in which a duty could be said to be relational irrespective of directionality. Consider again the statement in (15), and suppose that *Y*'s is an undirected duty to stay off *X*'s place. Yet it is a duty which concerns someone else—it concerns *X*—and which can be described in terms of a relation between two persons, purely as a function of the content of the duty.²¹ There is also a

²⁰ One way of framing the traditional debate between Will theories and Interest theories of rights is precisely as a debate about the directionality of duties: see Sumner (1987: 24, 39-53), Kramer and Steiner (2007: 298), or Sreenivasan (2010: 482). For recent overviews of the debate, see Wenar (2015) and, in this journal, May (2015). To give a broad (and crude) description, Will theorists think that to have a claim-right is to have normative control (e.g. the power to waiver) over the correlative duty, whereas Interest theorists think that to have a claim-right is to be protected by the imposition of the correlative duty. (One should not rule out, of course, the possibility that, under the correct theory of rights, it turns out that, appearances notwithstanding, all duties are indeed directed duties after all: Kramer (1998: 59), for example, defends the view that all public duties are owed *to* a collectivity: “the state, the nation, the community”; but the point is that this is a claim that needs to be backed by a theory of rights.)

²¹ Compare Hart (1955: 181) and Lyons (1969: 176).

broader sense in which a legal position can be described in relational terms. Take any action ϕ and any two people X and Y , and ask whether X has a duty towards Y to ϕ . Regardless of what we take ‘towards’ to mean, that question will have either a ‘Yes’ or a ‘No’ answer; and a ‘No’ answer is as much a relational statement as a ‘Yes’ one (‘... does not have a duty to ... towards ...’ is a three-place predicate). This purely syntactical ‘relation’ between X and Y does not mean, however, that X ’s *not* having a directed duty towards Y to ϕ should itself be classified as a ‘directed’ position specifically occupied by X vis-à-vis Y . Hohfeld fails to heed these distinctions. He speaks vaguely of there being duties (or other positions) ‘as between’ two people (1923: 48); he seems to think that my duties not to assault *you* or not to kill *your* dog are *ipso facto* owed *to you*, and therefore relational in the relevant sense (1923: 32-3, 41).

But then what emerges once these confusions are dispelled is not that Hohfeld’s framework provides an accurate picture of eight relational positions despite its failure to account comprehensively for all kinds of legal positions. What emerges, more drastically, is that the motivation to treat liberties and especially powers and immunities as truly relational or ‘directed’ notions is entirely absent from his discussion. We do have reason to regard claim-rights as relational positions: it does seem intuitively plausible to say that rights link up with directed duties, duties owed specifically to the right-holder. And this, again, is something that we can say regardless of the actual content of the directed duty. But without independent reasons to think that the other three positions that Hohfeld identifies as different senses of ‘right’—liberties, powers, immunities—are also relational or ‘directed’ in the same sense, his whole scheme of eight positions is undermined.²²

²² Hohfeld’s scheme is also undermined if some versions of the Will theory turn out to be correct. If one is owed a duty just in case one has a normative power (or powers) of a certain kind, won’t we then have powers correlating with directed duties? And won’t that upset the claim that the two ‘families’ of Hohfeldian notions are

2.2 Non-relational liberties

The literature on the correlativity axiom has mostly focused, as I said, on the claim-right/duty pair, but some authors, like Brown (2005) or van Duffel (2012), have considered the issue from the perspective of liberties. Brown has an interesting take on the matter: her claim is that alongside Hohfeldian claim-rights, we should recognise three kinds of liberties rather than just one. She offers the following ‘reformulated scheme of rights’ (2005: 363):

	X has a claim-right that $Y \varphi$	X has a correlative liberty-right against Y to φ	X has a general liberty-right to φ	X has a simple liberty to φ ²³
Opposite (contradictory)	_____	_____	X does not have permission to φ	X has a general duty not to φ (X is prohibited from φ -ing)
Correlative	Y has an obligation to X to φ	Y has a no-(liberty-) right that X not φ	_____	_____

Her starting-point is a distinction between two notions of ‘permissible’—mere absence of prohibition, and express permission—which she identifies as two basic kinds of liberty.²⁴ The former, which she calls a ‘simple liberty,’ concerns actions that stand ‘outside the remit of the

mutually independent (see the text accompanying note 14 above)? Sumner (1987: 44-5) and van Duffel (2012: 108-109) discuss similar points.

²³ In Brown’s original table this reads ‘simple liberty-right’ rather than just ‘simple liberty.’ Given the way she defines her terms (2005: 355), I think this is an unintentional mistake. Another glitch in her table—though this one is an intentional glitch—is that the suggestion of inverse symmetry is misleading. Brown’s ‘general liberty-rights’ and ‘simple liberties’ *have no* correlatives, but her ‘claim-rights’ and ‘correlative liberty-rights’ *do have* opposites—it is just that she chooses to omit them as not ‘important’ (2005: 362).

²⁴ This appears to correspond to von Wright’s well-known distinction between ‘weak’ and ‘strong’ permissions: see von Wright (1963: 86).

law' and are thus 'not unlawful' (2005: 351); an example would be one's liberty to eat breakfast. The latter she calls a 'liberty-right,' and here the action 'lies within the remit of the law in being expressly permitted' and is thereby 'made lawful' (2005: 352, 354). Examples would be the privilege against self-incrimination or one's license to enter someone's land.

Simple liberties, Brown says, are not relational positions. A simple liberty is the absence of a general (undirected) duty, and 'if Y 's ϕ -ing isn't prohibited then there is no legal relationship between Y and any other agent with respect to Y 's ϕ -ing' (2005: 355). On the other hand, liberty-rights—expressly conferred permissions—may be either relational (or 'correlative', as she puts it) or non-relational:

Liberty-rights . . . may be correlative or non-correlative. For example, if X grants Y a licence to enter X 's land . . . Y has a 'correlative liberty-right' against X to enter and there is a legal relationship between X and Y . On the other hand if Y has a privilege against self-incrimination then the liberty-right does not seem to be correlative. This would be equivalent to . . . [Y has express permission not to self-criminate'], without reference to a correlative agent. I term this a 'general liberty-right' (2005: 356).

There are therefore, she says, three kinds of liberty—simple liberties, correlative liberty-rights, and general liberty-rights—and Hohfeld's scheme needs to be reformulated 'so that the three different kinds' and their opposites and correlatives (if any) be separately identified (2005: 356-7).

For the most part, however, Brown's distinctions are unwarranted. Take correlative liberty-rights. Brown says that the *correlative* of Y 's correlative liberty-right against X to ϕ —unhelpfully, she uses the term 'correlative' both in the Hohfeldian sense and as part of the name of one kind of liberty—is X 's 'no-(liberty-)right' that Y not ϕ . But this cannot be correct: if correlative liberty-rights are, as she says, permissions to ϕ , they must refer to actions of the liberty-holder; there can be no such thing as a 'no-liberty-right' that *someone*

else perform or refrain from performing any action. Thus if *Y*'s expressly granted liberty-right to enter *X*'s land is to be regarded (as Brown claims) as a relational position, the correct statement of *X*'s correlative position should be that *X* has a no-*claim*-right (rather than a no-*liberty*-right) that *Y* not enter his (that is, *X*'s) land.²⁵ That would mean that Brown's correlative liberty-rights are identical to Hohfeldian liberties, understood as the absence of directed duties. Now Brown insists that her 'correlative liberty-rights' are not identical to Hohfeldian liberties (2005: 358); and it is true, of course, that the absence of a directed duty not to ϕ does not entail an explicit permission to ϕ . But then the question becomes whether there is reason to isolate explicitly granted Hohfeldian liberties as a distinct kind of normative position—and the answer seems to be 'No.' The fact that a permission is explicitly granted makes no difference to the normative position of the liberty-holder.²⁶ And if that is right, it also undermines Brown's more general distinction between simple liberties and liberty-rights.

What *is* warranted is Brown's basic point that Hohfeld's liberty is a 'hybrid category' (Brown 2005: 354). One consequence of the fact that Hohfeld and his followers failed to differentiate between having a duty and having a *directed* duty to ϕ , is that they also failed to differentiate between not having a directed duty to ϕ , and simply not having a duty—that is, being permitted—to ϕ . Indeed, several of Hohfeld's examples of liberties—like the 'privilege of entering' one's own land (1923: 39), or the 'privilege against self-crimination,' which he says 'signifies the mere negation of a duty to testify' (1923: 46)—are conspicuous for their

²⁵ Another way of describing *Y*'s position is, Brown remarks (2005: 358), by saying that *Y* has a 'no-obligation' to *X* to ϕ —'obligation' being the term she uses to refer to directed duties (2005: 356)—and just as obligations correlate with claim-rights, we should expect no-obligations to correlate with no-*claim*-rights, not with no-*liberty*-rights.

²⁶ Brown claims that an expressly granted liberty is 'directly protected' in a way that simple liberties are not (2005: 354-5); but she never explains what this protection amounts to (or would have to amount) to.

lack of reference to anything other than the simple absence of a duty.²⁷ Perhaps the confusion stems from the fact that—as van Duffel (2012: 112-113) also points out—if one is legally permitted to ϕ , one cannot be under a directed duty not to ϕ : if one has a directed duty not to ϕ , one has a duty not to ϕ and is therefore not permitted to ϕ . But that does not mean that being permitted to ϕ —although it does entail that no-one has a claim-right that one not ϕ —is itself a relational or ‘directed’ position correlating with someone’s no-right that one not ϕ .²⁸

2.3. *The fundamental status of single liberties*

Hohfeld’s claim that his eight positions are fundamental has also been challenged. Some rejoinders, like the assertion that liberties ‘cannot be retained as fundamental conceptions’ because they can be ‘reduced to the negation of another conception’ (Halpin 1997: 34), simply miss the mark; the inter-definability of liberties and duties does not settle logical priorities.²⁹ Authors who defend the reducibility of powers and power-conferring norms to

²⁷ In a paper that was described by a critic (Kocourek 1923: 152) as a ‘constitution of Hohfeldianism’ written by the ‘*pontifex maximus* of the Hohfeldian cult,’ Arthur Corbin explicitly characterised Hohfeldian liberties in the bare terms of what one *may* (as opposed to what one *must not*) do: see Corbin (1919b: 165-6). On the relations between the terminology of rights and the terminology of basic deontic concepts, see Sumner (1987: 20-53), O’Reilly (1999: 274-5), Celano (2001: 14-15), and Alexy (2002: 130-7).

²⁸ The point is that Hohfeld cannot account for the notion of a non-relational liberty (a permission), not that he cannot account for the notion of a *general* (relational) liberty, a liberty held ‘against everyone.’ Hohfeld explains the idea of a jural position held ‘against all the world’ in terms of a conjunction of several indefinitely numerous positions, held each with regard to a single individual (Hohfeld 1923: 92). (He calls each such position a ‘multital’ position (1923: 72), and this terminology (and his text) misleadingly convey the idea that a multital position must be one of a *large* class of similar positions; what seems to matter, however, is that the class, large or small, is indefinitely numerous: see Radin (1938: 1155-6) and Kramer (1998: 10, n. 2).)

²⁹ Halpin goes on to say that ‘Hohfeld could not . . . claim to have identified two further fundamental conceptions, simply by stating the negations of the first pair. It would be like a zoologist discovering a new

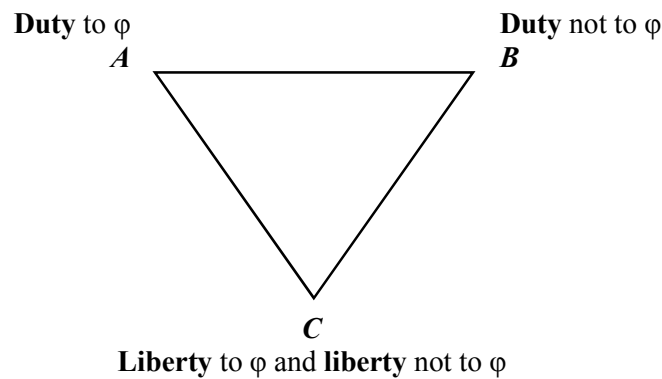
norms of conduct will also be led to say that the four positions in the Hohfeldian family of powers are reducible to the four positions in the family of claim-rights (though this is a much broader topic that cannot be addressed in this article).³⁰

But Halpin (2014) has recently offered a different argument against the fundamental status of single liberties (as opposed to paired liberties). His point is that statements of the form ‘*Y* is at liberty to ϕ ’ and ‘*Y* is at liberty not to ϕ ’ are ‘analytically incomplete and unstable’ (2014: 208). If we know that *Y* is at liberty to ϕ , our investigation has not yet reached its endpoint. Because *Y*’s liberty to ϕ can coexist either with a duty to ϕ , or with a liberty not to ϕ , we still need know whether or not *Y* is under a duty to ϕ . Once we obtain this information and complete the analysis, however, *Y*’s liberty to ϕ is either ‘swallowed up’ in a duty to ϕ , or paired up with a liberty not to ϕ . Thus ‘in practical terms only three legal relationships emerge’: *Y* may have a duty to ϕ , a duty not to ϕ , or the *conjunction* of a liberty to ϕ and a liberty not to ϕ . Single liberties, then, Halpin says, are not fundamental positions; it is only ‘combined or full’ liberties—paired liberties—that should be accorded fundamental status, alongside duties to ϕ , and duties not to ϕ (Halpin 2014: 208). Halpin represents this in what he calls a ‘triangle of possibilities’: a ‘modification to the square of opposition’ in

animal by coining the term “no-cow” (1997: 35). In the 1920s Kocourek had similarly complained that ‘law is no more constituted of no-constraints than botany is constituted of no-plants,’ and offered the analogy of a circus owner announcing that ‘in the closed room to the left is a No-Mother elephant and in the closed room to the right is a No-Baby elephant. Can anyone here now tell me what is in the[se] other rooms?’ (Kocourek 1922: 236 and 237, n. 7). But these objections are beside the point. The point is that if a person *A* has no duty towards another person *B* to perform a certain action ϕ , then *that*—not having that directed duty—is where *A* stands vis-à-vis both *B* and the action of ϕ -ing, and ‘*A* has, as against *B*, a liberty not to ϕ ’ gives us a true statement of that position.

³⁰ See Ross (1958: 158-69), Ross (1968: 106-138), Hart (1982b), Hart (2012: 26-49, 283-7), and Bulygin (2015).

which ‘each of the points of the triangle represents a stable conclusion with no need for further investigation, and not subject to further developments’ (2014: 197, 209-10; notation modified):



One result, Halpin says (2014: 210), is that:

we can no longer talk of a simple switch between liberty and duty based on a process of mere negation, with the implication that one can proceed from one to the other, and back again, merely by selecting its negative form. As the triangle makes clear, two paths of negation are open to us from the full liberty, either to a duty to do ϕ or to a duty not to do ϕ .³¹

Halpin is wrong, though, on two independent counts. He is wrong, first, to take the traditional square of opposition to be a representation of any ‘stage’ (whether ‘final’ or ‘non-final’) in some ongoing investigation. The square purports to be nothing more than a depiction of certain logical relations between certain kinds of sentences. Why should anyone be ‘troubled’ (Halpin 2014: 209) by the fact that the assignment of the value ‘true’ to one of a pair of logical subcontraries does not mandate—differently from what holds for both contraries and contradictories—the assignment of a determinate truth-value to the other member of the pair

³¹ Halpin’s arguments are an expansion of points made in Halpin (2003). Compare Alexy (1982: 130-1) and Paychère (1991: 376-7).

(which can be either true or false)? That is just how the relevant sentences relate logically; the square is in no need of ‘amendment’ (2014: 209). Second, Halpin is also wrong to suppose that a statement that someone has a legal duty to ϕ (or not to ϕ) is any more ‘stable’ than a statement that someone has a liberty to ϕ (or not to ϕ). Since there is no reason why one cannot be (as one sometimes is) under conflicting legal duties—legal systems are systems of positive law that may fail to be consistent—our knowledge that Y is under a legal duty to ϕ does not warrant the inference that Y is not under a duty not to ϕ . There is therefore no reason to treat statements of single liberties as less fundamental, or less ‘stable’ or ‘complete,’ than statements of duties.³²

3. Uses in Legal Argument

One point stressed by Hohfeld is both particularly important and enduringly significant, and that is the distinction between liberties and claim-rights.³³ Failure to realise that claim-rights do, but liberties do not, imply duties on someone else, and that a liberty to ϕ is simply the absence of a duty not to ϕ , can lead directly to unwarranted conclusions of law. Hohfeld illustrated the dangers of confusing claim-rights and liberties with the following passage by Lord Lindley in the case of *Quinn v Leathem* [1901] AC 495:

³² Halpin’s notion of a ‘complete’ analysis is also ill-defined. He says that ‘a person who is told that he enjoys a “liberty not” to do something, will need further information before deciding on his conduct: whether that liberty not is subsumed by a duty not, or joined with a liberty’ (2003: 48). But surely whether this further information is needed is a purely contingent matter: if I am minded *not* to ϕ , all I need to know is whether I have a liberty not to ϕ : I will have no reason to care about whether I also have a duty not to ϕ .

³³ This distinction, to be sure, did not originate with Hohfeld. On its history, see Pound (1915: 102-113), Kocourek (1920), Stone (1964: 140-3), Dickey (1971), and Losano (1976).

[Leathem, the plaintiff] was at liberty to earn his living in his own way . . . This liberty involved the liberty to deal with other persons who were willing to deal with him. This liberty is a right recognized by law; its correlative is the general duty of every one [including Quinn, the appellant] not to prevent the free exercise of this liberty except so far as his own liberty of action may justify him in so doing.

This argument is denounced by Hohfeld as being either a *non sequitur* or question-begging (1923: 42-3). If Leathem's 'right' to earn his living is to be understood as a liberty, then it entails no correlative duty on Quinn not to prevent him from doing so: the correlative of such a duty would rather be Leathem's claim-right that Quinn not prevent him from earning his living, and this claim-right is simply not entailed by that liberty. If, on the other hand, Leathem's 'right' is a right proper—a claim-right—then the argument is circular: whether Quinn had the correlative duty was precisely what was at issue.³⁴

This analysis of Lord Lindley's argument in *Quinn v Leathem* has not gone undisputed.³⁵ But 100 years on we still find numerous instances of fallacious judicial reasoning rooted in the same basic confusion of liberties and claim-rights.

The case of *Fleming v Ireland*, cited at the beginning of this article, is a vivid example. Contrary to what the Court suggests, Fleming was not claiming that she had a 'right to commit suicide'; for this 'right' could only be a *liberty* to commit suicide, and that was something that she already had under existing law: she herself was under no legal duty *not* to commit or attempt to commit suicide. Nor was she claiming to have a 'right . . . to have assistance with the exercise of that right.' Her claim, rather, was that there should be *no duty not* to assist others in committing suicide, which is to say that people should be (under certain

³⁴ The mistake of thinking that one's 'right'—that is, liberty—to ϕ correlates with someone else's duty not to interfere with one's ϕ -ing is still quite common: see e.g. Edmundson (2012: 73) or Herstein (2014: 32).

³⁵ See e.g. Hudson and Husak (1980), engaging with Perry (1977)—for replies, see Perry (1980) and Adams (1985: 88-9)—and also Thomson (1990: 55, n. 11), and Simmonds (1998: 168-195).

conditions) at liberty to do so. And so the Court's argument—that Fleming's claim implied 'correlative duties on the State and others to defend and vindicate' her supposed 'right to commit suicide'—crumbles, for liberties imply no correlative duties, on the State or anyone else.

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Works cited

Adams, David M. 'Hohfeld on Rights and Privileges.' *Archiv für Rechts- und Sozialphilosophie* 71.1 (1985) 84-95.

Alexy, Robert. *A Theory of Constitutional Rights*. Translated by Julian Rivers. Oxford: Oxford University Press, 2002.

Austin, John. *Lectures on Jurisprudence or the Philosophy of Positive Law*. Volume 1, fifth ed. Ed. Robert Campbell. London: John Murray, 1885.

- Bamforth, Nicholas. 'Hohfeldian Rights and Public Law.' *Rights, Wrongs and Responsibilities*. Ed. Matthew H. Kramer. Basingstoke: Palgrave Macmillan, 2001. 1-27.
- Brown, Vivienne. 'Rights, Liberties and Duties: Reformulating Hohfeld's Scheme of Legal Relations?' *Current Legal Problems* 58 (2005): 343-367.
- Bulygin, Eugenio. 'On Norms of Competence.' *Essays in Legal Philosophy*. Ed. Carlos Bernal, Carla Huerta, Tecla Mazzarese, José Juan Moreso, Pablo E. Navarro, and Stanley L. Paulson. Oxford: Oxford University Press, 2015. 272-283.
- Carrió, Genaro R. 'Los conceptos jurídicos fundamentales de W. N. Hohfeld.' *Notas sobre Derecho y Lenguaje*. Fourth ed. Buenos Aires: Abeledo-Perrot (1990). 301-317.
- Celano, Bruno. 'I diritti nella *jurisprudence* anglosassone contemporanea: Da Hart a Raz.' *Analisi e Diritto* (2001): 1-58.
- Clark, Charles E. 'Relations, Legal and Otherwise.' *Illinois Law Quarterly* 5 (1922), 26-35.
- Corbin, Arthur L. 'Conditions in the Law of Contract.' *Yale Law Journal* 28.8 (1919a) 739-768.
- 'Legal Analysis and Terminology.' *Yale Law Journal* 29.2 (1919b) 163-173.
- Coyle, Sean. 'Are There Necessary Truths About Rights?' *Canadian Journal of Law and Jurisprudence* 15 (2002): 21-49.
- Dickey, Anthony. 'Hohfeld's Debt to Salmon.' *University of Western Australia Law Review* 10.1 (1971): 59-64.
- Edmundson, William A. *An Introduction to Rights*. Second ed. Cambridge: Cambridge University Press, 2012.
- Feinberg, Joel. 'Duties, Rights, and Claims.' *American Philosophical Quarterly* 3.2 (1966) 137-144.
- 'The Nature and Value of Rights.' *The Journal of Value Inquiry* 4.4 (1970): 243-260.
- 'A Postscript to the Nature and Value of Rights.' *Bioethics and Human Rights*. Ed. Elsie L. Bandman and Bertram Bandman. Boston: Little, Brown, 1978. 32-34.
- Finnis, John. 'Rights: Their Logic Restated.' *Philosophy of Law. Collected Essays: Volume IV*. Oxford: Oxford University Press, 2011. 375-388.
- Fitch, Frederic B. 'A Revision of Hohfeld's Theory of Legal Concepts.' *Logique et Analyse* 10 (1967): 269-276.
- Gilbert, Margaret. 'Giving Claim-Rights Their Due.' *Rights: Concepts and Contexts*. Ed. Brian H. Bix and Horacio Spector. Surrey: Ashgate, 2012. 301-323.
- Gorman, Jonathan. *Rights and Reason: An Introduction to the Philosophy of Rights*. Chesham: Acumen, 2003.
- Gray, John Chipman. *The Nature and Sources of the Law*. New York: Columbia University Press, 1909.

- Halpin, Andrew. *Rights and Law: Analysis and Theory*. Oxford: Hart, 1997.
- ‘Fundamental Legal Conceptions Reconsidered.’ *Canadian Journal of Law and Jurisprudence*. 16.1 (2003): 41-54.
- ‘Bentham’s *Limits* and Hohfeld.’ *The Legal Philosophy and Influence of Jeremy Bentham: Essays on Of the Limits of the Penal Branch of Jurisprudence*. Ed. Guillaume Tusseau. London: Routledge, 2014. 196-223.
- Hart, H. L. A. ‘Are There Any Natural Rights?’ *The Philosophical Review* 64.2 (1955): 175-191.
- ‘Legal Rights.’ *Essays on Bentham: Studies in Jurisprudence and Political Theory*. Oxford: Clarendon Press, 1982a. 162-193.
- ‘Legal Powers.’ *Essays on Bentham: Studies in Jurisprudence and Political Theory*. Oxford: Clarendon Press, 1982b. 194-219.
- The Concept of Law*. Third edition. Oxford: Oxford University Press, 2012.
- Harris, J. W. *Legal Philosophies*. Second ed. London: Butterworths, 1997.
- Herstein, Ori J. ‘A Legal Right to Do Legal Wrong’ *Oxford Journal of Legal Studies* 34.1 (2014) 21-45.
- Honoré, A. M. ‘Rights of Exclusion and Immunities against Divesting.’ *Tulane Law Review* 34 (1960): 453-468.
- Hohfeld, Wesley Newcomb. *Fundamental Legal Conceptions as Applied in Judicial Reasoning and Other Legal Essays*. Ed. Walter Wheeler Cook. New Haven: Yale University Press, 1923.
- Hudson, Stephen D. and Douglas N. Husak. ‘Legal Rights: How Useful is Hohfeldian Analysis?’ *Philosophical Studies* 37.1 (1980): 45-53.
- Kocourek, Albert. ‘Various Definitions of Jural Relation.’ *Columbia Law Review* 20.4 (1920): 394-412.
- ‘Non-Legal-Content Relations.’ *Illinois Law Quarterly* 4 (1922): 233-239.
- ‘Non-Legal-Content Relations Recombated.’ *Illinois Law Quarterly* 5 (1923): 150-159.
- Kramer, Matthew H. ‘Rights without Trimmings.’ Matthew H. Kramer, N. E. Simmonds and Hillel Steiner. *A Debate over Rights: Philosophical Inquiries*. Oxford: Oxford University Press, 1998. 7-111.
- Kramer, Matthew H. and Hillel Steiner. ‘Theories of Rights: Is There a Third Way?’ *Oxford Journal of Legal Studies* 27.2 (2007): 281-310.
- Lindahl, L. *Position and Change: A Study in Law and Logic*. Dordrecht: D. Reidel, 1977.
- Losano, M. G. ‘Le fonti dei concetti giuridici fondamentali di Wesley N. Hohfeld.’ *Materiali per una Storia della Cultura Giuridica* 6 (1976): 321-416.
- Lucas, J. R. *The Principles of Politics*. Oxford: Clarendon Press, 1966.

- Lyons, David. 'Rights, Claimants, and Beneficiaries.' *American Philosophical Quarterly* 6.3 (1969): 173-185.
- 'The Correlativity of Rights and Duties.' *Noûs* 4.1 (1970): 45-55.
- MacCormick, Neil. 'Children's Rights: A Test-Case for Theories of Right.' *Archiv für Rechts- und Sozialphilosophie* 62.3 (1976) 305-317.
- 'Rights in Legislation.' *Law, Morality, and Society: Essays in Honour of H. L. A. Hart*. Ed. P. M. S. Hacker and J. Raz. Oxford: Clarendon Press, 1977. 189-209.
- May, Simon Căbulea. 'Directed Duties.' *Philosophy Compass* 10.8 (2015), 523-532.
- Moritz, Manfred. *Über Hohfelds System der juristischen Grundbegriffe*. Lund: C.W.K. Gleerup, 1960.
- O'Reilly, Daniel T. 'Are There Any Fundamental Legal Conceptions?' *The University of Toronto Law Journal* 49.2 (1999): 271-279.
- Paychère, François. 'Hohfeld Revisited: A Matter of Viewpoint?' *Archiv für Rechts- und Sozialphilosophie* 77.3 (1991): 374-384.
- Page, William Herbert. 'Terminology and Classification in Fundamental Jural Relations.' *The American Law School Review* 4.11 (1921): 616-623.
- Penner, J. E. *The Idea of Property in Law*. Oxford: Oxford University Press, 1997.
- Perry, Ronen. 'Correlativity.' *Law and Philosophy* 28.6 (2009): 537-584.
- Perry, Thomas D. 'A Paradigm of Philosophy: Hohfeld on Legal Rights.' *American Philosophical Quarterly* 14.1 (1977): 41-50.
- 'Reply in Defense of Hohfeld.' *Philosophical Studies* 37.2 (1980) 203-209.
- Pound, Roscoe. 'Legal Rights.' *International Journal of Ethics* 26.1 (1915): 92-116.
- Radin, Max. 'L'analisi dei rapporti giuridici secondo il metodo di Hohfeld.' *Rivista Internazionale di Filosofia del Diritto* 7.2 (1927): 117-132.
- 'A Restatement of Hohfeld.' *Harvard Law Review* 51.7 (1938): 1141-1164.
- Rainbolt, George W. 'Rights as Normative Constraints on Others.' *Philosophy and Phenomenological Research* 53.1 (1993): 93-111.
- Robinson, R. E., S. C. Coval, and J. C. Smith. 'The Logic of Rights.' *University of Toronto Law Journal* 33.3 (1983): 267-314.
- Ross, Alf. *On Law and Justice*. Trans. Margaret Dutton. London: Stevens & Sons, 1958.
- *Directives and Norms*. London: Routledge & Kegan Paul, 1968.
- Simmonds, Nigel E. 'Rights at the Cutting Edge.' Matthew H. Kramer, N. E. Simmonds and Hillel Steiner. *A Debate over Rights: Philosophical Inquiries*. Oxford: Oxford University Press, 1998. 113-232.

- ‘Introduction.’ In W. N. Hohfeld, *Fundamental Legal Conceptions as Applied in Judicial Reasoning*. Ed. David Campbell and Philip Thomas. Dartmouth: Ashgate, 2001. ix-xxix.
- Spena, Alessandro. ‘The Strange Case of the Protective Perimeter: Liberties and Claims to Non-Interference.’ *Law and Philosophy* 31 (2012): 161-184.
- Sreenivasan, Gopal. ‘Duties and their Direction.’ *Ethics* 120.3 (2010): 465-494.
- Stone, Julius. *Legal System and Lawyers’ Reasonings*. London: Stevens and Sons, 1964.
- Sumner, L. W. *The Moral Foundation of Rights*. Oxford: Clarendon Press, 1987.
- Terry, Henry T. *Some Leading Principles of Anglo-American Law Expounded with a View to Its Arrangement and Codification*. Philadelphia: T. & J. W. Johnson, 1884.
- Thomson, Judith Jarvis. *The Realm of Rights*. Cambridge, Massachusetts: Harvard University Press, 1990.
- van Duffel, Siegfried. ‘The Nature of Rights Debate Rests on a Mistake.’ *Pacific Philosophical Quarterly* 93.1 (2012): 104-123.
- von Wright, Georg Henrik. *Norm and Action: A Logical Enquiry*. London: Routledge and Keegan Paul, 1963.
- Wenar, Leif. ‘The Nature of Rights.’ *Philosophy and Public Affairs* 33.3 (2005): 223-252.
- ‘Rights.’ *The Stanford Encyclopedia of Philosophy* (Fall 2015 Edition). Edward N. Zalta (ed.), URL=<<http://plato.stanford.edu/archives/fall2015/entries/rights/>>
- Williams, Glanville. ‘The Concept of Legal Liberty.’ *Columbia Law Review* 56.8 (1956), 1129-1150.